

United States District Court
EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

IMPERIUM (IP) HOLDINGS, INC.,	§	
	§	
<i>Plaintiff,</i>	§	
	§	Civil Action No. 4:11-CV-163
v.	§	(Judge Clark/Judge Mazzant)
	§	
APPLE, INC. <i>et al</i> ,	§	
	§	
<i>Defendants.</i>	§	

**REPORT AND RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE
ON DEFENDANTS' MOTIONS FOR SUMMARY JUDGMENT OF NON-
INFRINGEMENT**

Plaintiff Imperium (IP) Holdings, Inc. filed suit against a number of Defendants, claiming infringement of United States Patent Nos. 6,271,884; 6,838,651; 6,838,715; 7,064,768; and 7,109,535. The court referred this matter to the undersigned for pretrial proceedings. Now before the court are Defendants': (1) Motion for Summary Judgment of Non-Infringement as to the '535 Patent (Dkt. #304); (2) Motion for Summary Judgment of Non-Infringement of Claim 15 of the '715 Patent (Dkt. #307); (3) Motion for Summary Judgment of Non-Infringement of Claims 14 and 17 of the '884 Patent (Dkt. #308); (4) Motion for Summary Judgment of Non-Infringement of All Patents (Dkt. #309); and (5) Motion for Summary Judgment of Non-Infringement of Claims 1-6 of the '884 Patent (Dkt. #310).

After a careful and thorough review of the record and the arguments presented, the court is not convinced that Defendants have shown that there is no material issue of fact as to whether the asserted claims have been infringed under the preponderance of the evidence standard.

It is therefore recommended that Defendants' Motions for Summary Judgment on Non-Infringement [Docs. # 304, 307, 308, 309, and 310] should be **DENIED**.

Within fourteen (14) days after service of the magistrate judge's report, any party may serve and file written objections to the findings and recommendations of the magistrate judge. 28 U.S.C. § 636(b)(1)(C).

Failure to file written objections to the proposed findings and recommendations contained in this report within fourteen days after service shall bar an aggrieved party from *de novo* review by the district court of the proposed findings and recommendations and from appellate review of factual findings accepted or adopted by the district court except on grounds of plain error or manifest injustice. *Thomas v. Arn*, 474 U.S. 140, 148 (1985); *Rodriguez v. Bowen*, 857 F.2d 275, 276-77 (5th Cir. 1988).

SIGNED this 26th day of February, 2013.


AMOS L. MAZZANT
UNITED STATES MAGISTRATE JUDGE